

111–5, the ‘American Recovery and Reinvestment Act of 2009’,” defines *reasonably available quantity* as “the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.” The applicant met the requirements specified for the availability inquiry as appropriate to the circumstances by conducting an extensive investigation into all possible sources for combination ARVs. Based on the investigation, several companies were found to manufacture the required ARVs, but none were able to meet all of the criteria in the project specifications, namely a conical body shape, a spring-loaded joint between the stem and the upper float, and a 316 SAE stainless steel body. Therefore, MCES contends that there is no domestic product of satisfactory quality available.

EPA’s national contractor prepared a technical assessment report based on the submitted waiver request. The report determined that the waiver request submittal was complete, that adequate technical information was provided, and that there were no significant weaknesses in the justification provided. Therefore, based on the information provided to EPA and to the best of our knowledge at this time, the four combination ARVs necessary for this project are not manufactured in the United States, and no other U.S. manufactured product can meet MCES’s project performance specifications and requirements.

EPA has also evaluated MCES’s request to determine if its submission is considered late or if it could be considered timely, as per the OMB Guidance at 2 CFR 176.120. EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contract as “late” if submitted after the contract date. However, EPA could also determine that a request be evaluated as timely, though made after the date that the contract was signed, if the need for a waiver was not reasonably foreseeable. If the need for a waiver is reasonably foreseeable, then EPA could still apply discretion in these late cases as per the OMB Guidance, which says “the award official *may* deny the request.” For those waiver requests that do not have a reasonably unforeseeable basis for lateness, but for which the waiver basis is valid and there is no apparent gain by the ARRA recipient or loss on behalf of the government, then EPA will still consider granting a waiver.

In this case, there are no U.S. manufacturers that meet MCES’s project specifications for the purchase of four combination ARVs to prevent failure or blockage of the South St. Paul Forcemain (pressure pipe). The waiver request was submitted after the contract was signed due to the large size of the project. With the nature of large projects having numerous items in the specifications, it is difficult and time consuming to know the origin of every single item, until shop drawings are submitted or it comes time to purchase an item. Therefore, MCES was not aware that there are no domestic equivalents for the ARVs in question until after the contract was signed. There is no indication that MCES failed to request a waiver in order to avoid the requirements of the ARRA, particularly since there are no domestically manufactured products available that meet the project specifications. EPA will consider MCES’s waiver request, a foreseeable late request, as though it had been timely made since there is no gain by MCES and no loss by the government due to the late request.

The purpose of the ARRA is to stimulate economic recovery in part by funding current infrastructure construction, not to delay projects that are “shovel ready” by requiring loan recipients such as MCES to revise their standards and specifications and to start the bidding process again. The imposition of ARRA Buy American requirements on such projects otherwise eligible for ARRA State Revolving Fund assistance would result in unreasonable delay and thus displace the “shovel ready” status for this project. To further delay project implementation is in direct conflict with a fundamental economic purpose of the ARRA, which is to create or retain jobs.

EPA has reviewed this waiver request and has determined that the supporting documentation provided by MCES is sufficient to meet the criteria listed under Section 1605(b) of the ARRA and in the April 28, 2009, ‘Implementation of Buy American provisions of Public Law 111–5, the ‘American Recovery and Reinvestment Act of 2009’ Memorandum’: Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The basis for this project waiver is the authorization provided in Section 1605(b)(2) of the ARRA. Due to the lack of production of this item in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet MCES’s project performance specifications and

requirements, a waiver from the Buy American requirement is justified.

The March 31, 2009, Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of the ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, MCES is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of four combination ARVs using ARRA funds as specified in the community’s request. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers “based on a finding under subsection (b).”

**Authority:** Public Law 111–5, section 1605.

Dated: May 9, 2011.

**Susan Hedman,**

*Regional Administrator, Region 5.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–9426–2]

### Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Metropolitan Council Environmental Services of St. Paul, MN (MCES)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA is hereby granting a project waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States of a satisfactory quality] to the Metropolitan Council Environmental Services (MCES) of St. Paul, Minnesota, for the purchase of one Parkson StrainPress SC–4 pressurized in-line sludge screen to process gravity thickened primary sludge at its Blue Lake Wastewater Treatment Plant located in Shakopee, Minnesota. This is a project-specific waiver and it only applies to the use of the specified product for the ARRA funded project being proposed. Any

other ARRA project that may wish to use the same product must apply for a separate waiver based on project-specific circumstances. This sludge screen, which is supplied by Parkson Corporation of Vernon Hills, Illinois, is manufactured in Germany, and meets MCES's performance specifications and requirements. The Regional Administrator is making this determination based on the review and recommendations of EPA Region 5's Water Division. MCES has provided sufficient documentation to support its request. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the purchase of one StrainPress SC-4 pressurized in-line sludge screen for the Blue Lake Wastewater Treatment Plant Solids Improvements project that may otherwise be prohibited under Section 1605(a) of the ARRA.

**DATES:** *Effective Date:* June 29, 2011.

**FOR FURTHER INFORMATION CONTACT:**

Andrew Lausted, SRF Program Manager, (312) 886-0189, or Puja Lakhani, Office of Regional Counsel, (312) 353-3190, U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604.

**SUPPLEMENTARY INFORMATION:**

In accordance with ARRA Section 1605(c) and pursuant to Section 1605(b)(2) of Public Law 111-5, Buy American requirements, EPA hereby provides notice that it is granting a project waiver to MCES of St. Paul, Minnesota, for the acquisition of a Parkson StrainPress SC-4 pressurized in-line sludge screen that is manufactured in Germany.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here EPA. A waiver may be provided if EPA determines that (1) Applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

This pressurized in-line sludge screen will remove undesirable contaminants

and debris from the waste primary sludge prior to the pelletizing process. MCES selected this particular sludge screen because it already has two Parkson screens at the facility, and a third screen is needed to accommodate increased wastewater flows and loading. This screen is an exact match for the existing screens. Additionally, spare parts are in stock, and staff are trained to operate and maintain the screen. Only the Parkson StrainPress SC-4 screen is small enough to fit into the designated treatment area at the Blue Lake facility. MCES's submissions clearly articulated functional reasons that justified their technical specifications and requirements.

The April 28, 2009 EPA HQ Memorandum, "Implementation of Buy American provisions of Public Law 111-5, the 'American Recovery and Reinvestment Act of 2009,'" defines *reasonably available quantity* as "the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design."

The applicant met the requirements specified for the availability inquiry as appropriate to the circumstances by conducting an extensive investigation into all possible sources for pressurized in-line sludge screens. Based on the investigation, three companies were found to manufacture the required sludge screens, but none were manufactured in the United States. Given the space limitations of the project and that the two existing Parkson sludge screens have operated effectively since 1999 and still have many years of useful life, MCES believes that a third screen would perform equally well in this specific application. Therefore, MCES contends that there is no domestic product of satisfactory quality available consistent with the specifications of this project.

EPA's national contractor prepared a technical assessment report based on the submitted waiver request. The report determined that the waiver request submittal was complete, that adequate technical information was provided, and that the utility's claim that no U.S. manufacturer could provide the item was supported by the available evidence. Therefore, based on the information provided to EPA and to the best of our knowledge at this time, the Parkson StrainPress SC-4 pressurized in-line sludge screen necessary for this project is not manufactured in the United States, and no other U.S. manufactured product can meet MCES's

project performance specifications and requirements.

EPA has also evaluated MCES's request to determine if its submission is considered late or if it could be considered timely, as per the OMB Guidance at 2 CFR 176.120. EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contract as "late" if submitted after the contract date. However, EPA could also determine that a request be evaluated as timely, though made after the date that the contract was signed, if the need for a waiver was not reasonably foreseeable. If the need for a waiver is reasonably foreseeable, then EPA could still apply discretion in these late cases as per the OMB Guidance, which says "the award official may deny the request" for a waiver. For those waiver requests that do not have a reasonably unforeseeable basis for lateness, but for which the waiver basis is valid and there is no apparent gain by the ARRA recipient or loss on behalf of the government, then EPA will still consider granting a waiver.

In this case, there are no U.S. manufacturers that meet MCES's project specification for this pressurized in-line sludge screen. The waiver request was submitted after the contract was signed due to the large size of the project, with approximately 200 sub-contracts, which led to MCES not being made aware that there are no domestic equivalents for the sludge screen until after the contract was signed. There is no indication that MCES failed to request a waiver in order to avoid the requirements of the ARRA, particularly since there are no domestically manufactured products available that meet the project specifications. EPA will consider MCES's waiver request, a foreseeable late request, as though it had been timely made since there is no gain by MCES and no loss by the government due to the late request.

The purpose of the ARRA is to stimulate economic recovery in part by funding current infrastructure construction, not to delay projects that are "shovel ready" by requiring loan recipients such as MCES to revise their standards and specifications and to start the bidding process again. The imposition of ARRA Buy American requirements on such projects otherwise eligible for ARRA State Revolving Fund assistance would result in unreasonable delay and thus displace the "shovel ready" status for this project. To further delay project implementation is in direct conflict with a fundamental

economic purpose of the ARRA, which is to create or retain jobs.

EPA has reviewed this waiver request and has determined that the supporting documentation provided by MCES is sufficient to meet the criteria listed under Section 1605(b) of the ARRA and in the April 28, 2009, "Implementation of Buy American provisions of Public Law 111-5, the 'American Recovery and Reinvestment Act of 2009' Memorandum": Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The basis for this project waiver is the authorization provided in Section 1605(b)(2) of the ARRA. Due to the lack of production of this item in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet MCES's project performance specifications and requirements, a waiver from the Buy American requirement is justified.

The March 31, 2009, Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of the ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, MCES is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111-5 for the purchase of one Parkson StrainPress SC-4 pressurized in-line sludge screen using ARRA funds as specified in the community's request. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers "based on a finding under subsection (b)."

**Authority:** Pub. L. 111-5, section 1605.

Dated: January 31, 2011.

**Susan Hedman,**

*Regional Administrator, Region 5.*

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**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2011-0464; FRL-8877-4]

### Registration Review; Pesticide Dockets Opened for Review and Comment and Other Docket Actions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has established registration review dockets for the pesticides listed in the table in Unit III.A. With this document, EPA is opening the public comment period for these registration reviews. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment. This document also announces the Agency's intent not to open a registration review docket for cucumber beetle attractant. This pesticide does not currently have any actively registered pesticide products and is not, therefore, subject to review under the registration review program. This document also announces the availability of amended final work plans for the registration review of the pesticides isoxaben and bifenthrin; these work plans have been amended to incorporate revisions to the data requirements.

**DATES:** Comments must be received on or before August 29, 2011.

**ADDRESSES:** Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III.A., by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One

Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

*Instructions:* Direct your comments to the docket ID numbers listed in the table in Unit III.A. for the pesticides you are commenting on. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this